

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to definition of “common ownership” and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 459.103.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 459.103.

Purpose and Summary

Pursuant to Chapter 5 and Iowa Code section 17A.7, the Iowa Pork Producers Association (IPPA) petitioned the Commission to amend the definition of “common ownership” as defined in rule 567—65.1(459,459B). IPPA proposed that the definition of “common ownership” be amended to replace the term “majority” with the phrase “10 percent or more.” IPPA contended in its petition that the proposed amendment “is intended to promote continued environmentally responsible livestock production in compliance with all applicable law by ensuring that multiple limited liability companies or other business entity structures with the same owners cannot be used for the purpose of avoiding environmental regulation by having all owners hold less than a majority, and none with a 10 percent or more, ownership interest with each company owning a different confinement feeding operation on the same farm.”

The Commission hereby agrees with this proposal and is proposing an amendment to the definition of “common ownership” in rule 567—65.1(459,459B) to remove the word “majority” and replace it with “10 percent or more,” meaning that a person, business or any other ownership entity subject to Iowa Code chapter 459 would be considered a common owner (and hence a single animal feeding operation) if there is an ownership interest of 10 percent or more of two or more facilities located within the regulated separation distances of one another. The proposed rule making will ensure that the ownership structures of confinement feeding operations are adequately addressed and that operations that should submit manure management plans and construction permits are doing so.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa. It is anticipated there may be a minimal increase in permit fees, indemnity fees, and compliance fees submitted to the Department of Natural Resources (Department) because there may be more confinement feeding operations that are required to submit a manure management plan, a construction permit application, or both. There is no anticipated increase in costs to the Department associated with implementing the proposed amendment. Department employees who currently oversee manure management plans and construction permits will continue to do so; no additional personnel would be needed. There will be a minimal impact to a few facilities each year that previously would not have been required to submit a manure management plan or construction permit application, but now would be required to do so because of the proposed change in the definition. The increased expenses would include consulting costs, as well as permit, compliance and indemnity fees. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 29, 2019. Comments should be directed to:

Kelli Book
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: kelli.book@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location.

October 29, 2019
1 to 2 p.m.

Conference Room 4 East
Wallace State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule **567—65.1(459,459B)**, definition of “Common ownership,” as follows:

“*Common ownership*” means the ownership of an animal feeding operation as a sole proprietor, or a ~~majority~~ 10 percent or more ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ~~majority~~ ownership interest is a common ownership interest when it is held directly,

indirectly through a spouse or dependent child, or both. The following exceptions shall apply to this definition:

1. For an animal feeding operation structure constructed before [effective date of this rule], “common ownership” means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

2. This definition shall not apply to a dry bedded confinement feeding operation which is subject to the common ownership requirements in Iowa Code section 459B.103(3) “a”(3).